

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL No. 677 of 2006
With
CIVIL APPLICATION No. 4679 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****and****HONOURABLE MS.JUSTICE H.N.DEVANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT & 2 - Appellant(s)
Versus
RAMESH C JOSHI - Respondent(s)**

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Appearance :

MS HANSA PUNANI AGP for Appellant(s) : 1 - 3.
MR RK MISHRA for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MS.JUSTICE H.N.DEVANI**

**Date : 01/05/2006
ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Heard the learned AGP for the appellants and
Mr RK Mishra for the original petitioner.

2. This appeal is directed against the interlocutory order dated 18.2.2005 passed by the learned Single Judge.

3.0 The facts leading to this appeal are as under:-

3.1 The respondent- original petitioner holding the qualification of M.Sc. in Physics and also Diploma in Biological Physics from Bhabha Atomic Research Centre, Mumbai was appointed on the post of Radiological Physicist Class-II in the regular pay scale at the SSG Hospital, Baroda by order dated 9.12.1984 (Annexure-C) after selection by the Departmental Selection Committee headed by the Director of Medical Education and Research, Gujarat State. Before this appointment, the petitioner was rendering services as Radiation Physicist in the Rajasthan Government Medical College at Udaipur during the period from 25.4.1983 to 12.12.1984. The petitioner resigned from that post in view of the said appointment at Baroda. The appointment was of course made on adhoc basis subject to the condition that it was liable to be terminated within one year or upon availability of regular candidate through GPSC, whichever was earlier. The appointment order also recorded that the original petitioner was appointed after relaxing the upper age-limit (Mr RK Mishra for the original petitioner points out that

the power to relax is conferred by the second proviso to Rule 3 of Recruitment Rules contained in the Government Notification dated 27.10.1983- Annexure-D). For as long as two decades, no other replacement was available and the petitioner was continued in service. His annual increments were also released and he was also placed in the revised pay-scale as per the Fifth Pay Commission Report.

3.2 Two decades after the petitioner's appointment, the Government issued resolution dated 9.9.2004 (Annexure-B), and Medical Superintendent, Baroda passed consequential order dated 13.9.2004 (Annexure-A), terminating the petitioner's services only on the ground that the petitioner was appointed on adhoc basis and he was not eligible for the post under the recruitment rules because he was over-age on the date of appointment. The petitioner, therefore, moved this Court and after issuance of notice on the petition, by order dated 14.12.2004 (Annexure-F) the State Government offered the petitioner appointment on the same post but on a consolidated pay of Rs.10,000/- in the separate Directorate created for radiation safety in view of the directions given by the Hon'ble Supreme Court for preventing the damage being caused by radiation emanating from radiological diagnostic machines.

3.3 The petitioner amended the petition to

challenge the above order dated 14.12.2004 also. The learned Single Judge has admitted the petition and granted interim relief staying operation of the termination orders passed in September 2004. Hence, this appeal.

4. It transpires from the record that after his appointment in December 1984, the petitioner did apply to the GPSC for regular appointment in the year 1985, but his application was not entertained by GPSC only on the ground that the petitioner was over-age. Thus, in spite of his excellent qualifications and in spite of the power conferred by the statutory Recruitment Rules to relax the upper age-limit (the second proviso to Rule 3) and in spite of non-availability of any other eligible candidate within the upper age-limit neither the Government nor the GPSC applied their mind to the public interest warranting relaxation of upper age limit. As if that was not bad enough, in spite of the petitioner having rendered satisfactory services as a Radiological Physicist Class-II for the last twenty years, the petitioner's services were sought to be terminated only on the ground that he had crossed the upper age-limit at the time of his appointment in 1984 and was, therefore not appointed through the GPSC. The learned Single Judge has, therefore, rightly admitted the petition and granted interim protection.

5. The learned AGP would, however, submit that the learned Single Judge has granted mandatory interim relief while admitting the petition and, therefore, the appeal deserves to be admitted.

6. All that the learned Single Judge has done is to stay the operation of the termination order dated 13.9.2004 which will necessarily have the consequence of restraining the authorities from terminating the petitioner's services from the post held and pay-scale applicable before September 2004. Even if it were to be treated as mandatory direction, we are of the view that in the facts and circumstances of the case, such an order is fully justified, because in **Deoraj vs. State of Maharashtra, (2004) 4 SCC 697**, the Apex Court has held that where the interest of justice so require and if irreparable damage is being caused to the petitioner by the action of the authorities, the Court can in an appropriate case grant even mandatory interim relief. Even a less than model employer would have not only gratefully continued in service such a highly qualified officer with such long service but would have offered him higher pay-scale, if not higher post. But here we have a Government which does not rest content with passing an order of termination after twenty years and offering petitioner the same post with a lower pay, but also does not even show the grace by acquiescing in the just and proper

interlocutory order passed by the learned Single Judge.

7. We, therefore, do not find any merit in the appeal. The appeal is, therefore, summarily dismissed. We direct the authorities to continue the petitioner on the post of Radiological Physicist Class II at Baroda in the regular pay scale in which the appellant was drawing his pay before the impugned orders were passed in September 2004, with all the attendant benefits like payment of arrears of salary and arrears of difference of salary and release of annual increments as and when they fall due. This order shall not, however, come in the way of the original petitioner's case being considered for promotion to any higher post, if any, in accordance with the Recruitment Rules for such higher post. We also direct the appellants to pay the respondent herein (original petitioner) costs quantified at Rs.5,000/- (Rupees five thousand) to be paid within one month from today.

Since the appeal is dismissed, the civil application does not survive and the same is accordingly dismissed.

8. A copy of this order shall be sent to the Chief Secretary to the Government of Gujarat so as to impress upon him that the dockets of this Court do not continue to get burdened with such frivolous and

unnecessary appeals and that too at the cost of the public exchequer.

(M.S. SHAH, J.) (HARSHA DEVANI, J.)

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